

# CREDIT ACCOUNT & TERMS AND CONDITIONS OF SALE

- 1) **Definitions and interpretation**
- Associated Entities** has the same meaning as in the Corporations Act 2001.
- Select Wines Group Company** means Select Wines Pty Ltd, Select Wines (VIC) Pty Ltd or a Related Body Corporate of Select Wines Pty Ltd ABN 67 161 971 786 or Select Wines (VIC) Pty Ltd.
- Conditions** means these Credit Account Terms and Conditions.
- Consequential Loss** means loss of expected savings, loss of use, loss of opportunity, loss of profit, loss of revenue, increased financing costs, loss arising from delay, or any consequential, special or indirect loss or damage, whether or not the possibility or potential extent of the loss or damage was known or foreseeable, and whether arising from a claim under indemnity, contract, tort (including negligence), statute or otherwise.
- Customer** means the party making this application for credit.
- Goods** means any goods supplied by the Supplier being alcoholic beverages including but not limited to wine, beer and spirits, non-alcoholic beverages and all related or ancillary goods.
- Insolvency Event** means, for the Customer, as applicable, being in liquidation or provisional liquidation, bankruptcy or under administration, having a controller (as defined in the Corporations Act 2001) or analogous person appointed to the Customer or any of the Customer's property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay the Customer's debts, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing the Customer's own affairs for any reason, taking any step that could result in the Company becoming an insolvent under administration (as defined in section 9 of the Corporations Act 2001), entering into a compromise or arrangement with, or assignment for the benefit of, any of the Customer's members or creditors, or any analogous event.
- Loss** means any expense, cost or damage of any kind and includes Consequential Loss and a fine or penalty imposed by a statutory or other authority.
- New Group Entity** means an entity that becomes a Related Body Corporate of Select Wines Pty Ltd after this application for credit is made by the Customer.
- Real Property** means all real property interests held by the Customer now or in the future. **Related Bodies Corporate** has the same meaning as in the Corporations Act 2001.
- Services** means any and all services provided by the Supplier.
- Supplier** means, in connection with the supply of any Goods or Services, the Select Wines Group Company making the supply to Customer.
- Supplier Ts&Cs** means any terms and conditions of quotation and supply, however described, notified by the Supplier to the Customer (whether on an invoice, quote, through the Supplier's website, docket or otherwise), or supply agreement (however described) in the Supplier's standard form entered into in writing between the Supplier and Customer.
- Singular words include the plural and vice versa. A mention of anything after include, includes or including, does not limit what else might be included.
- 2) **Structure of this document**
- (a) These Conditions are intended to regulate key trading terms including the extension of credit in connection with the supply of Goods or Services by Select Wines Group Companies to the Customer.
- (b) The terms set out in these Conditions are incorporated by reference as part of the Supplier Ts&Cs. Those terms are legally binding between the Supplier and the Customer and should be read together with the Supplier Ts&Cs. To the extent of any inconsistency, the Supplier Ts&Cs (excluding the incorporated Part A of these Conditions) prevail over these Conditions.
- 3) **Customer obligations**
- (a) These Conditions apply if the Supplier accepts any order for Goods or Services or both from the Customer, whether for cash or on credit. The Customer has no entitlement to credit unless in the Supplier's sole discretion the Supplier extends credit to the Customer. If in a particular case, the Supplier gives the Customer credit, the Supplier still reserves the right at any time and for any reason in the Supplier's sole discretion to refuse to supply any further Goods or Services to the Customer and to refuse to supply any Goods or Services or both to the Customer on credit terms. If the Supplier does decline to give the Customer further credit then that decision does not affect the credit terms which apply to any amounts the Customer then owes to the Supplier.
- (b) If the Customer fails to comply with any of the terms of these Conditions or in respect of any obligation to pay money to another Select Wines Group Company when due, suffers an Insolvency Event or makes any misrepresentation to a Select Wines Group Company, the balance of the Customer's account to the Supplier will become due and payable immediately.
- (c) The Customer agrees that it must:
- (i) pay by cash, bank cheque or electronic funds transfer to an account nominated by the Supplier, without any deduction or setoff, the price charged by the Supplier for Goods or Services supplied to the Customer on delivery or performance, or, if credit terms are offered, by the due date specified on the Supplier's invoice for which the goods or services were supplied or provided.
- (ii) pay any stamp duty assessed on this document or fee to register or maintain any security interest held by the Supplier in respect of Goods or Services supplied to the Customer.
- (iii) (if the Supplier elects to accept payments by company cheque, personal cheque or credit card), pay any fee required by the Supplier for the costs incurred in administering and accepting payments by company cheque, personal cheque or credit card of up to two percent (2%) plus GST of the amount invoiced. These service fees are to recover the average cost incurred by the Supplier in accepting payments by these methods.
- (iv) advise the Supplier in writing of the occurrence of any Insolvency Event, any change in its name, ownership or control, or any step being taken to sell an asset or assets (separately or together having a value being greater than 20% in value of its gross assets) as soon as practicable and not later than within two business days of such event, change or step occurring. The Customer acknowledges that, despite any such event, change, or step the Customer remains liable to pay the price for all Goods or Services supplied.
- (d) The Customer acknowledges that:
- (i) a minimum quantity of two (2) cases (24 x 750ml) for Brisbane, Gold Coast or Sunshine Coast area orders and three (3) cases (36 x 750ml) for all other areas;
- (ii) a case split fee may be charged for part-case orders;
- (iii) to order, purchase and accept delivery from the Supplier, where the Customer is a natural person, must be the age of at least eighteen (18) years or over to purchase alcoholic beverages. The Customer agrees not to supply any Goods purchased from the Supplier to anyone under the legal age for alcohol consumption within the state in which the Goods or Services are delivered. The Supplier reserves the rights to request formal identification to confirm the age of the Customer. If the Customer refuses or if the Supplier is not satisfied with the evidence supplied by the Customer then the Supplier may cancel any order. The Supplier will not be held liable for any Loss or Consequential Loss in the event that the Customer fails to comply with this clause;
- (iv) it will exchange the Supplier's pallets (that accompany the Goods purchased) with pallets of equivalent brand and condition. In the event that the Customer is unable to exchange the pallets, the Customer further agrees to be charged additionally for the cost of the pallets at a rate equivalent to the Supplier's replacement cost of the pallets.
- (v) subject to the limitations in sub clause (v) below:
- (1) the Customer agrees that should the Customer introduce any third party to the Supplier as the Customer's duly authorised representative, that once introduced to the Supplier that person shall have the full authority of the Customer to order any Goods, and/or to request any variation thereto, on the Customer's behalf (such authority to continue until all requested Goods have been delivered, or the Customer otherwise notifies the Supplier in writing that said person is no longer the Customer's duly authorised representative).
- (2) In the event that the Customer's duly authorised representative is to have only limited authority to act on the Customer's behalf then the Customer must specifically and clearly advise the Supplier in writing of the parameters of the limited authority granted to their representative.
- (3) The Customer specifically acknowledges and accepts that they will be solely liable to the Supplier for all additional costs incurred by the Supplier (including the Supplier's profit margin) in supplying any Goods, or variation/s thereto, requested by the Customer's duly authorised representative (subject always to the limitations imposed under sub clause (v) (if any)).
- 4) **Overdue accounts and security**
- (a) Any amount not paid by the due date will incur interest at a rate of 5% above the Reserve Bank of Australia Cash Rate calculated daily and compounded monthly but in no circumstances will the interest charged exceed 20% per annum.
- (b) The Customer agrees to pay all costs and expenses (including legal costs, commissions paid by the Supplier or its Related Bodies Corporate to any commercial or mercantile agent and disbursement fees) incurred by the Supplier in connection with the recovery of overdue amounts and enforcing the charge in clause 4(c).
- (c) As security for any amounts due to the Supplier from time to time, the Customer charges all of its legal and equitable interest (both present and future) of whatsoever nature held in any and all Real Property to the Supplier.
- (d) Without limiting the generality of the charge in clause 4(c), the Customer, agrees, on request by the Supplier, to execute any documents and do all things reasonably required by the Supplier, (including if a beneficial owner, as beneficial owner under the Conveyancing Act 1919 (NSW) or of any analogous implied term under the applicable governing law) to perfect the charge given in clause 4(c) including registering a mortgage security over any Real Property. The Customer appoints the Supplier to be the Customer's lawful attorney for the purposes of executing and registering such documents and taking all such steps in that regard. The Customer indemnifies the Supplier on an indemnity basis against all costs and expenses incurred by the Supplier in connection with the preparation and registration of any such steps needed to perfect the security or prepare or register the mortgage documents.
- (e) The Customer consents unconditionally to the Supplier lodging a caveat or caveats noting its interest in any Real Property.
- (f) The Supplier may appoint an agent to collect any debts owed by the Customer that are due from time to time to the Supplier.
- (g) A statement in writing signed by an authorised officer of the Supplier setting out the moneys due or owing to the Supplier at the date of the statement shall be sufficient evidence of the amount so due or owing until the contrary is proven.
- 5) **Retention of title**
- (a) The Supplier retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by the Supplier. Until payment in full has been received, the following terms apply.
- (b) Notwithstanding that title in the Goods remains with the Supplier until payment has been received in full, the Customer may sell such goods or use the Goods in the ordinary course of the Customer's business. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of the Supplier. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.
- (c) Until Goods are sold or used, the Customer must keep the Goods safe and free from deterioration, destruction, loss or harm, clearly designate the Goods as the property of the Supplier, store them in such a way they are clearly identified as the property of the Supplier and keep full and complete records, firstly, of the physical location of the Goods and, secondly, the ownership of the Goods by the Supplier.
- (d) The Supplier is irrevocably entitled at any time and from time to time before sale of any item of Goods by the Customer to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises caused by the removal of the Goods.
- (e) This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.
- 6) **Security interest**
- (a) The retention of title arrangement described in clause 5 constitutes the grant of a purchase money security interest by the Customer in favour of the Supplier in respect of all present and after-acquired Goods supplied to the Customer by the Supplier.
- (b) The Customer must immediately, if requested by the Supplier, sign any documents, provide all necessary information and do anything else required by the Supplier to ensure that the

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- Supplier's purchase money security interest is a perfected security interest.
- (c) The Customer will not enter into any security agreement that permits any other person to have or to register any security interest in respect of the Goods or any proceeds from the sale of the Goods until the Supplier has perfected its purchase money security interest.
- (d) For any Goods supplied that are not goods that are used predominantly for personal, domestic or household purposes, the parties agree to contract out of the application of ss 95, 118, 121(4), 130, 132(4), 135, 142 or 143 of the PPSA in relation to the Goods.
- (e) The Customer hereby waives any rights the Customer may otherwise have to:
- receive any notices the Customer would otherwise be entitled to receive under ss 95, 118, 121, 130, 132 or 135
  - apply to a Court for an order concerning the removal of an accession under section 97
  - object to a proposal of the Customer to purchase or retain any collateral under ss 130 and 135
  - receive a copy of a verification statement confirming registration of a financing statement, or a financing change statement, relating to any security interest the Supplier may have in Goods supplied to the Customer from time to time.
- (f) For the purposes of this clause "PPSA" means the Personal Property Securities Act 2009.
- (g) The expressions "accession", "collateral", "financing statement", "financing change statement", "security agreement", "security interest", "perfected security interest" and "verification statement" have the meanings given to them under, or in the context of the PPSA. References to sections are to sections of the PPSA.
- 7) Delivery, Risk and Returns**
- (a) Delivery of the Goods ("Delivery") is taken to occur at the time that:
- the Customer or the Customer's nominated carrier takes possession of the Goods at the Supplier's address; or
  - the Supplier (or the Supplier's nominated carrier) delivers the Goods to the Customer's nominated address, even if the Customer is not present at the address.
- (b) At the Supplier's sole discretion, any special instructions regarding Delivery outside the Sydney, Brisbane, Melbourne or Gold Coast Metropolitan area shall incur courier charges.
- (c) The Customer must take Delivery (by receipt or collection of the Goods) whenever the Goods are tendered for Delivery. In the event that the Customer is unable to take Delivery as arranged then the Supplier shall be entitled to charge a reasonable fee for redelivery and/or storage.
- (d) The Supplier may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with these Conditions.
- (e) Any time or date given by the Supplier to the Customer is an estimate only. The Customer must still accept Delivery even if late and the Supplier will not be liable for any Loss or Consequential Loss incurred by the Customer as a result of Delivery being late.
- (f) Risk in relation to any Goods passes to the Customer on delivery of the Goods ("Delivery"). Delivery of Goods will be at the Supplier's premises on collection of the Goods by the Customer, its employees, agent or contractors. If the Supplier has expressly agreed to ship the Goods, risk in the Goods passes immediately on delivery of the Goods to the Customer's designated place of delivery by the Supplier or its agent.
- (g) The Customer must insure the Goods on or before Delivery.
- (h) If any of the Goods are damaged or destroyed following Delivery but prior to ownership passing to the Customer, the Supplier is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Supplier is sufficient evidence of the Supplier's rights to receive the insurance proceeds without the need for any person dealing with the Supplier to make further enquiries.
- (i) If the Customer requests the Supplier to leave Goods outside the Supplier's premises for collection or to deliver the Goods to an unattended location or be left unattended at the Customer's premises, then such Goods shall be left at the Customer's sole risk.
- (j) The Customer must inspect the Goods on Delivery and must within seven (7) days of such time notify the Supplier in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow the Supplier to inspect the Goods.
- (k) The Supplier may in its absolute discretion accept non-defective Goods for return in which case the Supplier may require the Customer to pay handling fees of up to twenty-five percent (25%) of the value of the returned Goods plus any freight costs. The Customer must also bear the cost of freight from the Customer's premises to the Supplier's premises.
- (l) Notwithstanding anything contained in this clause if the Supplier is required by a law to accept a return then the Supplier will only accept a return on the conditions imposed by that law.
- 8) Exclusion of implied terms**
- (a) The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into Supplier Ts&Cs or in connection with the supply of any Goods or Services by the Supplier under law or statute or custom or international convention are excluded.
- 9) Limitation of liability**
- (a) To the maximum extent permitted by law and subject to clauses 8 and 10, the Supplier's total liability arising out of or in connection with its performance of its obligations pursuant to these Conditions, the Supplier Ts&Cs, or arising out of or in connection with the supply of specific Goods or Services (including pursuant to or for breach of these Conditions, Supplier Ts&Cs or repudiation thereof, under statute, in equity or for tort, including negligent acts or omissions) is limited as follows:
- the Supplier shall have no liability to the Customer for any Consequential Loss;
  - the Supplier's total aggregate liability for Loss, however arising, shall not exceed the GST exclusive aggregate price paid by the Customer to the Supplier for the specific Goods or Services that gave rise to the Loss in question. The limitations and exclusions in this sub-clause 9 (b) do not apply to the extent that any Loss is directly attributable to:
    - the personal injury or death caused by the Supplier's default, breach of these Conditions or the Supplier Ts&Cs or negligence; or
    - fraud by the Supplier.
- (b) Each party must take reasonable steps to mitigate any Loss it suffers or incurs.
- 10) Limitation of liability under Australian Consumer Law Guarantees**
- (a) To the extent that Goods supplied by the Supplier are not goods of a kind ordinarily acquired for personal, domestic or household use and the Customer is deemed to be a consumer for the purposes of section 64A of the Australian Consumer Law, the Customer agrees that the
- Supplier's liability for a failure to comply with a consumer guarantee that the Customer may have a benefit under the Australian Consumer Law (other than a guarantee under ss 51 (title), 52 (undisturbed possession) and 53 (undisclosed securities), is limited to, at the option of the Supplier, one or more of the following:
- replacement of the goods or the supply of equivalent goods;
  - the repair of the goods;
  - the payment of the cost of replacing the goods or of acquiring equivalent goods; or
  - equivalent goods; or
  - the payment of the cost of having the goods repaired.
- (b) To the extent that Services supplied by the Supplier are services other than services of a kind ordinarily acquired for personal, domestic or household use or consumption, the Supplier's liability for failure to comply with a consumer guarantee that the Customer may have the benefit of is limited to, at the option of the Supplier:
- the supply of the Services again; or
  - the payment of the cost of having the Services supplied again.
- 11) GST**
- (a) If the Supplier has any liability to pay Goods and Services Tax (GST) on the supply of any Goods or Services to the Customer, the Customer must pay to the Supplier in addition, an amount equivalent to the GST liability of the Supplier at the same time as the consideration is paid for the Goods or Services (unless the consideration for that supply is expressed specifically to be GST inclusive).
- (b) In addition, the Customer must pay any other costs, taxes and duties that may be applicable in addition to the price for the Goods or Services except where they are expressly stated by the Supplier as being included in the price.
- 12) Goods on Consignment**
- (a) Where Goods are supplied on consignment for promotional purposes, the following provisions apply specifically to those Goods:
- the Goods shall be at the Customer's risk from the time of Delivery, and the Customer shall be responsible for insuring the Goods;
  - the Customer may retain possession of the Goods until:
    - the Customer sells them; or
    - the Supplier requires the return of the Goods; or
    - the end of the promotion
    - whichever first occurs and thereafter, any consignment Goods shall be returned to the Supplier at the Customer's cost within seven (7) days;
- (b) the Customer shall notify the Supplier at the end of the promotional period of all consignment Goods sold during that time and shall, within fourteen (14) days following the conclusion of the promotion, make payment to the Supplier for all consignment Goods sold.
- 13) New Group Entities**
- (a) It is intended that all New Group Entities will have the benefit of these Conditions.
- (b) The Customer promises the Supplier that it will only order Goods or Services from a New Group Entity on the strict condition that these Conditions apply to such an order and that the New Group Entity will have the benefit of and may enforce these Conditions irrespective of the fact that the New Group Entity may not have been in existence or a Related Body Corporate of Select Wines Pty Ltd at the time of initial acceptance by the Customer of these Conditions.
- 14) Privacy disclosure and consent**
- The Customer authorises the Supplier to:
- obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in this document and from any other credit provider or credit reporting agency for the purpose of:
    - assessing this application for credit; and
    - collecting overdue payments relating to credit owed by the Customer, or in connection with any guarantee given by the Customer;
  - use, disclose or exchange with other credit providers and Select Wines Group entities information about the Customer's credit arrangements in order to assess this application for credit, monitor credit worthiness and collect overdue accounts, and
  - disclose the contents of any credit report on the Customer to the Supplier and other Related Bodies Corporate of Select Wines Pty Ltd, and any of their solicitors and mercantile agents
- 15) General**
- (a) The failure by the Supplier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Supplier's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- (b) the Supplier may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- (c) The Customer agrees that the Supplier may amend these terms and conditions at any time. If the Supplier makes a change to these terms and conditions, then that change will take effect from the date on which the Supplier notifies the Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Supplier to provide Goods to the Customer.
- (d) Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- (e) The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.
- 16) Governing law**
- These Conditions are governed by and is to be interpreted according to the laws in force in the state of Queensland and the parties submit to the non-exclusive jurisdiction of the courts operating in the state of Queensland. Where the Goods or Services are supplied to multiple states, these Conditions are governed by and are to be interpreted according to the laws in force in Queensland and the parties submit to the non-exclusive jurisdiction of the courts operating in Queensland. The operation of the United Nations Convention on Contracts for the Sale of International Goods is hereby excluded.